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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 300

[Docket No. 140502404-4404-01]

RIN 0648-BE21

International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species;
Fishing Capacity Limits in Purse Seine and Longline Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Advance notice of proposed rulemaking; notification of control date; request for comments.

SUMMARY: NMFS announces that persons who bring a U.S. purse seine or longline vessel into the fisheries in the western and central Pacific Ocean (WCPO) after [insert date of publication in the FEDERAL REGISTER] (“control date”), or who, after the control date, expand the carrying capacity or well volume of a purse seine vessel already in the fishery, are not guaranteed the future participation of that vessel in the fishery if NMFS decides to limit the number of fishing vessels in the fishery or, with respect to purse seine vessels, the fishing capacity of the fleet or of vessels in the fleet in terms of carrying capacity or well volume. Furthermore, with respect to purse seine vessels, even if the future participation of such a vessel is allowed, the vessel’s future allowable level of fishing effort and/or catch might be limited if NMFS decides to limit vessels’ individual or collective allowable levels of fishing effort or catch. NMFS is considering the need to undertake such actions to implement provisions of a conservation and management measure adopted by the

Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC or Commission).

DATES: Comments must be submitted in writing by [Insert date 30 days after date of publication in the FEDERAL REGISTER].

ADDRESSES: You may submit comments on this document, identified by NOAA-NMFS-2014-0067, by either of the following methods:

- Electronic Submission: Submit all electronic public comments via the Federal e-Rulemaking Portal. Go to www.regulations.gov/#!docketDetail;D=NOAA-NMFS-2014-0067, click the “Comment Now!” icon, complete the required fields, and enter or attach your comments.
- Mail: Submit written comments to Michael D. Tosatto, Regional Administrator, NMFS, Pacific Islands Regional Office (PIRO), 1845 Wasp Blvd., Building 176, Honolulu, HI 96818.

Instructions: Comments sent by any other method, to any other address or individual, or received after the end of the comment period, might not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on www.regulations.gov without change. All personal identifying information (e.g., name and address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous). Attachments to electronic comments will be accepted in Microsoft Word, Excel, or Adobe PDF file formats only.

FOR FURTHER INFORMATION CONTACT: Tom Graham, NMFS PIRO, 808-725-5032.

SUPPLEMENTARY INFORMATION:

Background on the U.S. WCPO Purse Seine and Longline Fisheries

Participation by U.S. flagged purse seine and longline vessels in the WCPO fisheries is contingent on fishing authorizations granted under several statutes.

The U.S. WCPO purse seine fishery is regulated in part under the authority of the South Pacific Tuna Act of 1988 (16 U.S.C. 973-973r; SPTA) through implementing regulations at 50 CFR part 300, subpart D. The terms of the treaty between the United States and 16 Members of the Pacific Islands Forum Fisheries Agency (Treaty on Fisheries between the Governments of Certain Pacific Island States and the Government of the United States of America and its annexes, schedules, and implementing agreements, as amended; hereafter called “the Treaty”) are implemented by the SPTA and the regulations cited above. The Treaty provides access to and generally governs U.S. fishing vessels operating in the Treaty Area, which comprises much of the WCPO, including all or portions of the exclusive economic zones of the 16 Pacific Island Parties to the Treaty (PIPs) through a licensing system. License applications are first submitted to NMFS, which are approved or disapproved according to procedures established at 50 CFR 300.32. NMFS forwards approved applications to the Pacific Islands Forum Fisheries Agency (FFA, located in the Solomon Islands), which issues the licenses and acts as the Treaty administrator on behalf of the PIPs.

In addition to being governed by the Treaty and the SPTA, the U.S. WCPO purse seine fishery is subject to the authority of the WCPFC Implementation Act (16 U.S.C. 6901 et seq.). The WCPFC Implementation Act authorizes the Secretary of Commerce to implement the provisions of the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Convention) and the decisions of the Commission, which was established under the Convention. The area of competence of the Commission, or the Convention

Area, includes the majority of the Treaty Area. As a Party to the Convention and a Member of the Commission, the United States is obligated to implement the decisions of the Commission. The decisions of the Commission can be found on its web site (<http://www.wcpfc.int/>). Pursuant to the Convention and the decisions of the Commission, a U.S. fishing vessel must have a high seas fishing permit (see below) with a valid WCPFC Area Endorsement, issued by NMFS under 50 CFR 300.212, to be used for commercial fishing for highly migratory species on the high seas in the Convention Area.

The U.S. WCPO purse seine fishery is also subject to the authority of the Magnuson-Stevens Fishery Conservation and Management Act (16 U.S.C. 1801 et seq.; MSA), particularly with respect to the operation of the fishery within the U.S. exclusive economic zone. The fishery is also subject to the authority of the High Seas Fishing Compliance Act (16 U.S.C. 5501 et seq.), which governs the conduct of U.S. fishing vessels on the high seas, and under which a high seas fishing permit is required for a U.S. fishing vessel to be used for commercial fishing anywhere on the high seas.

The U.S. WCPO longline fishery is regulated in part under the authority of the MSA. Longline vessels are subject to the management regime developed by the Western Pacific Fishery Management Council and established in the Fishery Ecosystem Plan for Pacific Pelagic Fisheries of the Western Pacific Region, which is implemented through regulations at 50 CFR part 665. Among other management controls, there are limited entry programs for the Hawaii and American Samoa longline fisheries, with specific limits on the numbers of fishing permits available in each of the two fisheries. Longline vessels are also subject to the authority of the WCPFC Implementation Act. Like U.S. purse seine vessels, a U.S. longline vessel must have a high seas fishing permit with a valid WCPFC Area Endorsement, issued by NMFS under 50 CFR 300.212,

to be used for commercial fishing for highly migratory species on the high seas in the Convention Area.

Recent Decisions of the WCPFC

In December 2013, the Commission adopted a conservation and management measure for bigeye tuna, yellowfin tuna, and skipjack tuna (CMM 2013-01). Most of that CMM's provisions are in effect from February 4, 2014, until December 31, 2017. The CMM includes provisions specific to longline vessels and provisions specific to purse seine vessels. The CMM's longline provisions include limits on vessel numbers and limits on bigeye tuna catches. The CMM's purse seine provisions include limits on fishing effort, restrictions on the use of fish aggregating devices (FADs), catch retention requirements, observer requirements, and restrictions on vessel numbers and vessels' fishing capacity.

This advance notice of proposed rulemaking (ANPR) and control date relate to CMM 2013-01's provisions on vessel numbers (which apply to both purse seine and longline vessels) and its provisions on vessels' fishing capacity (which apply only to purse seine vessels).

Regarding purse seine vessels, CMM 2013-01 obligates certain flag States, including the United States, to limit the number of their purse seine vessels that are greater than 24 meters in length, have freezing capacity, and operate between the latitudes of 20° North and 20° South to the current level (paragraph 49 of CMM 2013-01). CMM 2013-01 also obligates certain flag States, including the United States, to ensure that purse seine vessels in their fleets are not replaced with vessels with greater carrying capacity or well volume, or that the catch or fishing effort of such vessels is not greater than that of the replaced vessels (paragraph 50 of CMM 2013-01). Notwithstanding this latter obligation, CMM 2013-01 provides for flag States to allow the replacement of purse seine vessels in their fleets with vessels for which building approval has been

granted and notified to the Commission before March 1, 2014 (paragraph 50 of CMM 2013-01). These provisions for purse seine vessels do not apply to small island developing States or Participating Territories of the WCPFC, which include American Samoa, Commonwealth of the Northern Mariana Islands, and Guam.

Regarding longline vessels, CMM 2013-01 obligates certain flag States, including the United States, to limit the number of their longline vessels with freezing capacity targeting bigeye tuna to the current level (paragraph 51 of CMM 2013-01), and to limit the number of their ice-chilled longline vessels targeting bigeye tuna and landing exclusively fresh fish to the current level or to the current number of licenses available under established limited entry programs (paragraph 52 of CMM 2013-01). These provisions for longline vessels do not apply to small island developing States or Participating Territories of the WCPFC, which include American Samoa, Commonwealth of the Northern Mariana Islands, and Guam.

Establishment of Control Date and Possible Rulemaking

One purpose of this ANPR is to notify persons that if they attempt to bring a vessel into the U.S. WCPO purse seine fishery or longline fishery after the control date of [insert date of publication in the FEDERAL REGISTER], or if, after the control date, they expand the carrying capacity or well volume of a purse seine vessel already in the fishery, there is no assurance of being granted future participation of that vessel in the fishery if NMFS decides to limit the number of fishing vessels in the fishery, or, with respect to purse seine vessels, the fishing capacity of the fleet or of vessels in the fleet in terms of carrying capacity or well volume. Furthermore, with respect to purse seine vessels, even if the participation of such a vessel in the future is granted, the vessel's future allowable level of fishing effort and/or catch might be limited if NMFS decides to limit vessels' individual or collective allowable levels of fishing effort or catch beyond the limits

already in place. For the purse seine fishery, any of these limits would likely apply only to vessels more than 24 meters in length with freezing capacity (all of the 40 currently SPTT-licensed purse seine vessels fall in this category). For the longline fishery, any limit on vessel numbers would likely apply only to vessels that NMFS determines target bigeye tuna.

A second purpose of this ANPR is to solicit comments and input on possible ways to establish limits on purse seine fishing capacity as required under paragraphs 49 and 50 of CMM 2013-01, specifically on vessels' individual or collective carrying capacity, well volume, fishing effort, and/or catch levels. NMFS is especially interested in comments on whether it would be preferable to place limits on carrying capacity, well volume, fishing effort, or catch levels; on possible measures of carrying capacity and well volume that could be used for the purpose of such limits; and on possible methods for determining and verifying such measures.

Establishment of this control date does not commit NMFS to any particular action or, if action is taken, any particular criteria for limiting vessel numbers in the U.S. WCPFC purse seine or longline fisheries or for limiting fishing capacity or fishing effort or catch levels in the U.S. WCPO purse seine fishery: NMFS might decide to continue to rely on existing regulatory controls, such as, for purse seine vessels, the limits on the number of available licenses under SPTA regulations, and for longline vessels, the limits on the number of available permits under MSA regulations. For example, NMFS has determined that the United States is currently in full compliance with the longline vessel number limits of CMM 2013-01 by virtue of the Hawaii longline limited entry program. As long as the number of permits available under that program does not increase – and NMFS does not anticipate any such increase in the foreseeable future – the United States would remain in compliance with the longline vessel number limits of CMM 2013-01.

Vessels are not guaranteed future participation in the U.S. WCPO purse seine or longline fisheries, regardless of their participation before or after the control date. Furthermore, NMFS might adopt a different control date or it might take an action that does not involve a control date.

If NMFS proceeds with a proposed rule, the scope of the rule might be expanded to implement additional provisions of CMM 2013-01.

Classification

This advance notice of proposed rulemaking has been determined to be not significant for the purposes of Executive Order 12866.

Authority: 16 U.S.C. 6901 et seq.

Dated: July 7, 2014.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory Programs,

National Marine Fisheries Service.

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